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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/669,150	
	Filing Date	09/25/2000	
	First Named Inventor	Richard Eric Nemeth	
	Art Unit	3611	
	Examiner Name	Cassandra Hope Davis	
Total Number of Pages in This Submission	23	Attorney Docket Number	

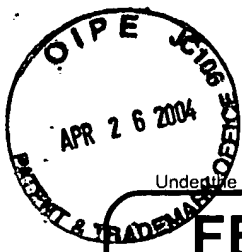
ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input checked="" type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below): Declaration Exhibits Receipt Postcard
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Delbert J. Barnard, Esq.
Signature	
Date	04/22/2004

CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.	
Typed or printed name	Delbert J. Barnard, Esq.
Signature	
Date	04/22/2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 0

Complete if Known

Application Number	09/669,150
Filing Date	09/25/2000
First Named Inventor	Richard Eric Nemeth
Examiner Name	Cassandra Hope Davis
Art Unit	3611
Attorney Docket No.	

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit Account Number: 02-0915
Deposit Account Name: Barnard & Pauly P.S.

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Description	Fee Paid
		1001	770	2001 385 Utility filing fee	
		1002	340	2002 170 Design filing fee	
		1003	530	2003 265 Plant filing fee	
		1004	770	2004 385 Reissue filing fee	
		1005	160	2005 80 Provisional filing fee	
SUBTOTAL (1)					(\$) 0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	-20** =	X	=
Multiple Dependent	-3** =	X	=

Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 0

SUBMITTED BY

Name (Print/Type)	Delbert J. Barnard, Esq.	Registration No. (Attorney/Agent)	20515	Telephone	206-381-3100
Signature		Date	04/22/2004		

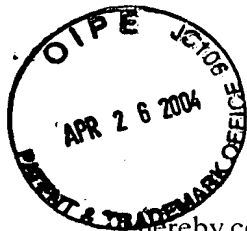
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3611

Image



PATENT APPLICATION

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 22, 2004.

April 22, 2004

Delbert J. Barnard
Delbert J. Barnard
Registration No. 20,515

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit:	3611
Examiner:	Cassandra Hope Davis
Applicant:	Richard Eric Nemeth
Serial No.:	09/669,150
Filed:	September 25, 2000
For:	HEAD MOUNTED LETTER "M" DISPLAY
Date:	April 22, 2004

SUPPLEMENTAL RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This will supplement the Response that was filed on February 10, 2004, relating to the above identified application.

In the Office Action dated October 10, 2003, claims 1-10 were all rejected has been

unpatentable over Dorner et al. D449,424 in combination with Lindheim 1,245,475. Dorner et al. D449,424 issued from an application that was filed on August 23, 2000. It is submitted that the rejection based on the combined teachings of Dorner et al. D449,424 and Lindheim 1,245,475 is not a proper rejection because Dorner et al. D449,424 is not a proper prior art reference with respect to this application. Accompanying this Supplemental Response is a Declaration signed by the applicant and submitted pursuant to 37 C.F.R. §1.131. The Declaration establishes that the applicant reduced his invention to practice on May 29, 2000. Dorner et al. D449,424, relied upon by the Examiner, has an effective date, its filing date, of August 23, 2000. Therefore, Dorner et al. D449,424 is not a proper reference since the applicant has been able to successfully swear behind Dorner et al. D449,424 by approximately three months.

Applicant's Declaration establishes that on May 29, 2000, he made four of his "M" hats and he, his sister, his sister's husband and a friend wore the hats at a televised baseball game played by the Seattle Mariners and the Chicago White Sox on that day. Exhibit II to applicant's Declaration shows the four "M" hat that were made by applicant on April 26, 2000, and worn at the game on that day by applicant, his sister, his sister's husband and a friend. Exhibit III is a still picture made from the videotape of the game that was made by applicant's father. Applicant's declaration testimony is collaborated by Exhibit I, copies of the tickets used by applicant and his friend, a parking coupon used by applicant's sister and her husband, by Exhibit II, a picture of the four "M" hats that were made by applicant on April 26, 2000 and worn by him, his sister, his sister's husband and his friend, at the game, by Exhibit III, the still picture made from the videotape of the game which shows applicant holding up his "M" hat and applicant sister wearing her "M" hat, and by the declaration of applicant's father, sister, her husband and a friend.

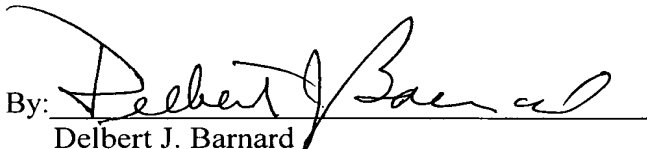
Based on the overwhelming evidence that applicant reduces his invention to practice before the priority date of Dorner et al. D449,424, the applicant respectfully submits that Dorner

et al. D449,424 is not a proper reference. Therefore, the rejection based upon Dorner D449,424 in view of Lindheim 1,245,475 cannot be sustained.

For all of the reasons states, the applicant respectfully request that claims 1 - 10 be granted and this application be allowed.

Respectfully submitted,

RICHARD ERIC NEMETH

By: 
Delbert J. Barnard
Attorney for Applicant
Registration No. 20,515
(206) 381-3100

DJB/ct